IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Smt.Balwant Kaur & Ors. vs. Manohar Lal

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S.B.Civil First Appeal No.155/1987
under Section 96 C.P.C. against the
judgment and decree dated 29.07.1987
passed by Shri Ram Chander RHJS,
Additional District Judge No.1, Alwar
in Civil Suit No.17/1980 decreeing the
suit of the plaintiff respondent against
the defendant-appellants.

Date of Judgment :::::: August 30, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.R.K.Mathur for appellants.
Mr.Shriram Yadav for respondent.

BY THE COURT (ORAL):-

The facts giving rise to this appeal in brief are that the plaintiff-respondent filed a suit for specific performance of a contract against the defendant appellants

in regard to agricultural land. It was mentioned in the plaint that on 19.7.1975, the defendants agreed to sell their agricultural land situated in village Pathroda Tehsil Laxmangarh for a consideration of Rs.12,000/-. They received Rs.8,300/- as advance on the same day and executed an agreement to sale in favour of the plaintiff. Defendants promised to execute sale deed to be registered up to 30.7.1976, but failed to fulfill their promise. Therefore, on 8.8.1977 the plaintiff sent a notice to them which was not replied by them. The plaintiff was ready to perform his part of the agreement but the defendants refused to perform their part of agreement. Hence, the plaintiff prayed for a decree of specific performance of the contract.

2. In the written statements, the defendant appellants denied the case of the plaintiff. They denied the fact of any agreement to sale of the land and also receipt of advance amount. It was mentioned by the defendants that the agreement to sale and the receipts are forged. They did not handover possession of the land to the plaintiff. Lastly, it was mentioned that no cause of action for filing the suit had arisen and that the suit was barred by limitation.

3. On the basis of the pleadings of the parties, the

learned trial court framed the following 7 issues:-

1. Had the defendants agreed to sell the land in dispute to the plaintiff for Rs.12,000/- and had accordingly executed the agreement for sale ?

2. Had the plaintiff paid Rs.8,300/- towards the part performance of his contract and had obtained the possession of the land in dispute ?

3. Is the plaintiff ready and willing and has been so, to perform his part of the contract ?

4. Have the defendants committed breach of the terms of the contract in not getting the sale-deed executed in favour of the plaintiff within the time fixed by the parties ?

5. Is the suit barred by limitation ?

6. Is the suit hit by the provisions of Section 42 of the Rajasthan Tenancy Act,1955 ? If so, its effect;

7. Relief ?

3. To prove his case the plaintiff Manohar Lal appeared himself as a witness and also examined PW.2 Sushil Chand Patwari Halka, PW.3 Gulab Singh, PW.4 Sheoram, PW.5 Manohar Lal and PW.6 Somnath and also exhibited some documents. From the side of the defendants four witnesses namely DW.1 Preetam Singh, DW.2 Surjeet Singh, DW3 Laxman Singh and DW.4 Harish Chand.

4. Learned trial court and after recording evidence of the parties and hearing both the sides, vide impugned

judgment and decree dated 29th July, 1987 decreed the suit of the plaintiff directing the defendant appellants to receive Rs.3700/- along with the charges of registry and to get the registered sale deed executed in favour of the plaintiff and if the defendants refused to do so, the plaintiff can get the registered sale deed executed by depositing the amount in the Court. Hence, this appeal.

5. During the course of hearing of the appeal on 7.1.1992, learned counsel for the appellants raised an argument that despite the fact that specific plea was raised by the defendant appellants regarding their being members of Schedule Caste because of their being Majahabi Sikh, no issue in this regard was framed by the learned trial court. On the basis of the arguments of learned counsel for the appellants, this Court vide order dated 7.1.1992 framed the following issue:-

> "Whether the appellants are Majahabi Sikhs and are the members of the Scheduled Castes ? If so, to what effect ?"

Initially this Court directed learned counsel for the appellants for producing evidence of the appellants on the issue framed. However, with the consent of both the parties, the matter was sent to the trial court for recording evidence of the parties on the additional issue

framed by this Court and also for giving its finding.

6. From the order of the learned trial court dated 28.11.1992 it appears that despite of opportunities having been granted to the defendant appellants none appeared before the trial court for recording evidence on the additional issue framed by this Court. Therefore, the learned trial court on the basis of the material placed and the evidence adduced by the plaintiff recorded a finding that the defendants are not `majahabi-sikhs' and are `jat-sikhs'.

7. Learned counsel for the appellants has contended that the learned trial court has neither properly appreciated nor critically examined the evidence of the parties while deciding the issues and, therefore, the impugned judgment and decree are bad in law and are deserve to be reversed and the suit of the plaintiff is liable to be dismissed.

8. On the other hand, learned counsel appearing for the plaintiff respondent supporting the impugned judgment has contended that the learned trial court has passed the impugned judgment after taking into consideration the evidence adduced by the parties and also the material available on record. Therefore, no interference is required

to be called for and the appeal is liable to be dismissed.

9. After hearing learned counsel for the appellant, I have gone through the material and evidence available on record as well as the impugned judgment.

9. Sofar as issues No. 1 and 2 are concerned, the burden of proving the same was upon the plaintiff respondent. To prove these issues the plaintiff respondent examined himself as PW.1 and also examined PW.3 Gulab Singh, PW.5 Manohar Lal and PW.6 Somnath Agarwal and also produced Ex.1 and 2. In his statement, plaintiff Manohar Lal has stated that on 19.7.1975 he purchased the disputed land from Smt.Banwant Kaur, Preetam Singh son of Ujagar Singh and Surjeet Singh son of Harbans Singh for a consideration of Rs.12,000/- and paid Rs.8300/- to them. Rest of the amount was agreed to be paid at the time of registry and the registry was to be done after one year. A document Ex.1 was written and receipt (Ex.2) of the amount paid by him to the defendants was also obtained. Exs.1 and 2 were prepared by Johari Lal, Deed writer at Govind Garh. Ex.1 bears signature of Johari Lal at place `A' to `B' and also bears the thumb impression of Balwant Kaur at place `X', thumb impression of Surjeet Singh at place `Y'. Preetam Singh put his signatures at place `C' to `D'. The witness further

deposed that Shrichand and Manohar Lal, witnesses of the agreement to sale, put their signatures at `E' to `F' and `G' to `H' respectively. He has stated that the stamp Ex.1 was purchased by Balwant Kaur. Although this witness has been cross-examined at length but nothing adverse could be brought on record. PW.3 Gulab Singh in his statement has corroborated the statement of plaintiff Manohar Lal. PW.5 Manohar Lal admitted his signature on the document Ex.1 and has stated that he put his signatures after the defendants put their signatures on the document. The witness has stated that Balwant Kaur told him that she had executed the document for selling her land. PW.6 Somnath Agarwal, Handwriting Expert has proved the thumb impressions and signatures of the defendants on Ex.1 and Ex.2. P.W.2 Sushil Chand, Patwari Halka has deposed that the land of Khasra Nos.75,76 and 80 situated in village Pathroda was entered in the name of Manohar Lal son of Heera Lal as per the record of Samvat 2032.

10. On the other hand, the defendants in their statements came with the case that they never agreed to sell the land, never executed Ex.1 or Ex.2 and never obtained any amount from the plaintiff. They also denied handing over possession of the land.

11. From the evidence of the parties it is clear that the plaintiff has been able to prove the issue Nos.1 and 2 and therefore, the finding arrived at by the learned trial court on these issues cannot be said to be perverse or illegal so as to call for any interference.

12. Sofar as issue No.3 is concerned, from the evidence of the plaintiff it is clear that the plaintiff has been able to prove this fact that time and again he requested the defendants to perform their part of contract by accepting the remaining amount and by executing registered sale deed in his favour. He even sent a notice which was not replied. The case of the defendants is only of denial. Thus, I am of the opinion that the learned trial court has committed no error in deciding issue No.3 in favour of the plaintiff and against the defendants.

13. Issue No.4 is inter-connected with issue Nos.1 and 2 and when the plaintiff has been able to prove issue Nos.1 and 2, I find no error in the finding of the learned trial court on issue No.4.

14. The burden to prove issue No.5 was upon the defendants but the defendants have produced no evidence to show that the suit was barred by limitation. In such circumstances,

the finding of learned trial court on issue No.5 cannot be said to be perverse or bad in law.

15. As has been noticed above this Court framed additional issue regarding defendant's being member of Scheduled Caste and afforded opportunity to them to prove this issue but they have failed to produce any evidence in this respect rather they did not appear before the learned trial court. Perusal of the sale deeds Ex.19 and 20 executed by Ujagar Singh and Harbans Singh it is clear that the appellants are Jat Sikhs and therefore, are not members of Scheduled Caste. In such a situation, the finding of the learned trial court on issue No.6 cannot be said to be perverse or illegal.

16. For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

(K.C.Sharma),J.

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